

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

CARL MCGLASSON
Claimant

APPEAL NO: 16A-UI-07971-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MATRIX METALS LLC
Employer

OC: 06/12/16
Claimant: Appellant (2)

Section 96.5-5 – Receipt of Pension
Section 96.6-2 – Timely Appeal

STATEMENT OF THE CASE:

The claimant filed a timely appeal of a representative's decision dated July 5, 2016, (reference 02) that deducted pension from benefits after his separation from Matrix Metals. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled on August 10, 2016. The claimant participated in the hearing. Linda Leffler, Human Resources Assistant and Rich Berzanski, Controller, participated in the hearing on behalf of the employer. Department's Exhibit D-1 was admitted into evidence.

ISSUE:

The issues are whether the claimant's appeal is timely and whether his pension was correctly deducted.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: A disqualification decision was mailed to the claimant's last-known address of record on July 5, 2016. The claimant received the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by July 15, 2016. The appeal was not filed until July 20, 2016, which is after the date noticed on the disqualification decision. The claimant mentioned to other employees his pension was being deducted and was told their pensions were not being deducted. That prompted the claimant to contact the Department about the issue in hopes of receiving retroactive pay for the pension benefits that had already been reported and deducted. Under these circumstances, the administrative law judge concludes the claimant's appeal is timely.

The claimant was separated on March 30, 2016. Effective upon his retirement, the claimant received a gross monthly pension in the amount of \$437.67 based upon a previous employer's contribution of 100 percent and an employee contribution rate of zero percent. The pension was frozen, however, in 2004, and Matrix Metals has not contributed toward the claimant's pension, but simply manages the plan.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the pension was not deducted correctly.

Iowa Code § 96.5(5) provides:

An individual shall be disqualified for benefits:

5. Other compensation.

a. For any week with respect to which the individual is receiving or has received payment in the form of any of the following:

(1) Wages in lieu of notice, separation allowance, severance pay, or dismissal pay.

(2) Compensation for temporary disability under the workers' compensation law of any state or under a similar law of the United States.

(3) A governmental or other pension, retirement or retired pay, annuity, or any other similar periodic payment made under a plan maintained or contributed to by a base period or chargeable employer where, except for benefits under the federal Social Security Act or the federal Railroad Retirement Act of 1974 or the corresponding provisions of prior law, the plan's eligibility requirements or benefit payments are affected by the base period employment or the remuneration for the base period employment. However, if an individual's benefits are reduced due to the receipt of a payment under this subparagraph, the reduction shall be decreased by the same percentage as the percentage contribution of the individual to the plan under which the payment is made.

b. Provided, that if the remuneration is less than the benefits which would otherwise be due under this chapter, the individual is entitled to receive for the week, if otherwise eligible, benefits reduced by the amount of the remuneration. Provided further, if benefits were paid for any week under this chapter for a period when benefits, remuneration or compensation under paragraph "a", subparagraph (1), (2), or (3), were paid on a retroactive basis for the same period, or any part thereof, the department shall recover the excess amount of benefits paid by the department for the period, and no employer's account shall be charged with benefits so paid. However, compensation for service-connected disabilities or compensation for accrued leave based on military service by the beneficiary with the armed forces of the United States, irrespective of the amount of the benefit, does not disqualify any individual otherwise qualified from any of the benefits contemplated herein. A deduction shall not be made from the amount of benefits payable for a week for individuals receiving federal social security pensions to take into account the individuals' contributions to the pension program.

The claimant was separated from employment with Matrix Metals March 30, 2016. He is receiving a pension from Matrix Metals Employee Pension Plan but that plan was frozen March 11, 2004, when Matrix Metals purchased the business. Although the employer took over management of the plan, it has not maintained or contributed after it took over the business in

March 2004. The claimant receives a gross monthly pension in the amount of \$437.67 based upon his prior employer's contribution of 100 percent and an employee contribution rate of zero percent. Under these circumstances, the claimant's pension is not deductible from unemployment benefits

DECISION:

The representative's July 5, 2016, decision (reference 02) is reversed. The pension was not deducted correctly.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs